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**UTAH LABOR COMMISSION**

**DELTA PHYSICAL THERAPY,  
Medical Provider;**

**MARTIN ESPINOZA,  
Injured Worker,**

**vs.**

**BIG O TIRE and WORKERS  
COMPENSATION FUND,**

**Respondents.**

**ORDER AFFIRMING  
ALJ'S DECISION**

**Case No. 04-0497**

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Big O Tires and its insurance carrier, Workers Compensation Fund, (referred to jointly as "Big O" hereafter) ask the Utah Labor Commission to review Administrative Law Judge Marlowe's determination that Big O is liable to Delta Physical Therapy ("Delta") for physical therapy provided to Martin Espinoza under the Utah Workers' Compensation Act, Title 34A, Chapter 2, Utah Code Annotated

The Labor Commission exercises jurisdiction over this motion for review pursuant to Utah Code Annotated § 63G-4-301 and § 34A-2-801(3).

**BACKGROUND AND ISSUE PRESENTED**

Delta seeks payment from Big O for physical therapy it provided to Mr. Espinoza following his work-related back injury. Judge Marlowe held an evidentiary hearing on Delta's claim and then appointed an impartial medical panel to evaluate whether the disputed physical therapy had been necessary to treat Mr. Espinoza's injury. Based on the medical panel's report, Judge Marlowe concluded that the physical therapy in question had been medically necessary and ordered Big O to pay for the therapy.

In requesting Commission review of Judge Marlowe's decision, Big O contends that Delta is not entitled to payment for Mr. Espinoza's disputed physical therapy because Delta failed to comply with the pre-authorization requirements of the Commission's Rule 612-2-3.B.

**FINDINGS OF FACT**

The Commission finds the following facts material to Delta's claim. Mr. Espinoza's back surgeon recommended that Mr. Espinoza receive physical therapy. Delta began providing that therapy on November 21, 2003. However, Delta did not submit a restorative services authorization form ("RSA")<sup>1</sup> to either Big O or the Commission. On December 17, 2003, January 8, 2004, and

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<sup>1</sup> This Labor Commission form provides an employer or its insurance carrier with information

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February 6, 2004, Big O asked Delta to submit an RSA form. Delta finally submitted the form on February 23, 2004. During this period of time, Delta provided a total of 39 physical therapy treatments to Mr. Espinoza, the last occurring on February 26, 2004.<sup>2</sup>

At some point, Big O engaged Dr. Marble to evaluate Mr. Espinoza's need for continuing physical therapy. On March 1, 2004, Dr. Marble advised Big O that Mr. Espinoza would continue to require physical therapy for up to six weeks. On March 2, 2004, and apparently based on Dr. Marble's opinion, Big O authorized Delta to provide 26 physical therapy treatments. However, in an addendum dated March 19, 2004, Dr. Marble changed his opinion and concluded that Mr. Espinoza had not required physical therapy after December 2003. Based on Dr. Marble's revised opinion, Big O rescinded authorization for any further physical therapy treatments and declined to pay Delta for any treatments that had been provided after January 23, 2004.

Delta challenged Big O's denial of payment by filing an application for hearing with the Labor Commission. As part of the adjudication of Delta's application, Judge Marlowe appointed an impartial panel of medical experts to determine whether Mr. Espinoza required more physical therapy. The medical panel concluded that Dr. Marble's first opinion had been correct—that Mr. Espinoza required continuing physical therapy through March 1, 2004, and for several weeks thereafter.

**DISCUSSION AND CONCLUSION OF LAW**

Section 34A-2-418 of the Utah Workers' Compensation Act requires employers or their insurance carriers to pay the reasonable cost of medical care necessary to treat work-related injuries. In this case, it is established that Mr. Espinoza injured his back while working for Big O and that the physical therapy Mr. Espinoza received from Delta was necessary to treat that injury. The only issue before the Commission is whether Big O is excused from paying for part of Mr. Espinoza's physical therapy because Delta failed to obtain Big O's preauthorization. This question is governed by the Commission's Rule 612-2-3.B, which provides in material part as follows:

1. Any medical provider billing under the restorative services section of the Labor Commission's adopted Resource-Based Relative Value Scale (RBRVS) or the Medical Fee Guidelines shall file the Restorative Services Authorization (RSA) form

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necessary to determine whether continuing physical therapy or other such treatment is medically necessary to treat an injured worker.

<sup>2</sup> It appears Mr. Espinoza received additional physical therapy from another provider after March 1, 2004, which subsequent therapy is not at issue in this case.

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with the insurance carrier or self-insured employer (payor) and the division within ten days of the initial evaluation.

2. Upon receipt of the provider's RSA form, the payor has ten days to respond, either authorizing a specified number of visits or denying the request. No more than eight visits may be incurred during the authorization process.

3. After the initial RSA form is filed with the payor and the division, an updated RSA form must be filed for approval or denial at least every six visits until a fixed state of recovery has been achieved as evidenced by either subjective or objective findings. If the medical provider has filed the RSA form per this rule, the payor is responsible for payment, unless compensability is denied by the payor. In the event the payor denies the entire compensability of a claim, the payor shall so notify the claimant, provider, and the division, after which the provider may then bill the claimant.

4. Any denial of payment for treatment must be based on a written medical opinion or medical information. The denial notification shall include a copy of the written medical opinion or information from which the denial was based. The payor is not liable for payment of treatment after the provider, claimant, and division have been notified in writing of the denial for authorization to pay for treatment. The claimant may then become responsible for payment.

5. Any dispute regarding authorization or denial for treatment will be determined from the date the division received the RSA form or notification of denial for payment of treatment.

In this case, neither Delta nor Big O fully adhered to Rule 612-2-3.B's provisions. Delta did not submit RSA forms in a timely manner—perhaps because Delta is located in Colorado and is therefore unfamiliar with Utah's workers' compensation rules. For its part, Big O did not put Delta on notice that it would not pay for the ongoing physical therapy treatments. To the contrary, on March 2, 2004, Big O authorized Delta to provide 26 treatments.<sup>3</sup>

In considering the effect of both parties' actions in this case, the Commission is mindful that it is a fundamental element of Utah's workers' compensation system that employers and insurance carriers must pay for medical care necessary to treat workplace injuries. As previously noted in this decision, the impartial medical panel's report has established that the physical therapy Delta provided to Mr. Espinoza was, in fact, medically necessary to treat his work injuries. And, although

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<sup>3</sup> Although Big O now argues its March 1, 2004, approval was for treatments already received, the language and context of the approval reasonably indicate that it was meant to authorize 26 **additional** treatments.

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the Commission's Rule 612-2-3.B does require physical therapy providers such as Delta to submit RSA forms, the Commission concludes that Big O's actions excused Delta from strict compliance with the rule. The Commission therefore concludes that Big O remains liable to Delta for the reasonable cost of Mr. Espinoza's physical therapy through February 26, 2004.

**ORDER**

For the reasons stated in this decision, the Commission affirms Judge Marlowe's order. It is so ordered.

Dated this 26<sup>th</sup> day of November, 2008.

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Sherrie Hayashi  
Utah Labor Commissioner

**NOTICE OF APPEAL RIGHTS**

Any party may ask the Labor Commission to reconsider this Order. Any such request for reconsideration must be received by the Labor Commission within 20 days of the date of this order. Alternatively, any party may appeal this order to the Utah Court of Appeals by filing a petition for review with the court. Any such petition for review must be received by the court within 30 days of the date of this order.